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## Deal on prisons is possible

**Settlement of lawsuits could let the governor limit the Legislature's influence on solution to overcrowding issue.**

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Gov. Arnold Schwarzenegger's administration is exploring a settlement of two lawsuits that would require California to dramatically reduce the number of inmates in its overcrowded prisons -- and limit the Legislature's influence on the issue, according to participants in the discussions.

The settlement discussions in the federal court cases, which have been consolidated, are in an early stage, and the framework of a deal has not been ironed out.

The talks are not formally tied to Schwarzenegger's proposal last week to release tens of thousands of low-risk prisoners to save the state money. That plan, which essentially reverses the court position he has taken opposing the early release of inmates, is expected to die in the Legislature, where it would need approval from Republicans who adamantly oppose it. But it could become the basis for a negotiated settlement, prisoners' lawyers said.

The proposal is "a step in the right direction," said Donald Specter, director of the nonprofit Prison Law Office and one of the attorneys for inmates in the case. His group is asking a panel of three federal judges to cap the state's prison population.

"We would rather settle this case and have the state do this than have the court do it," Specter said.

Even if lawmakers reject his proposal, Schwarzenegger could implement the inmate releases he envisions as part of a settlement, known as a consent decree, that the judges would approve. That would put extreme pressure on legislators to make the appropriate changes to state law.

Judges overseeing the two long-running federal lawsuits are threatening to order the state to release prisoners, cap the inmate population or both. They must first determine in a trial whether overcrowding is the primary cause of unconstitutional medical and mental healthcare lapses in the state's 33 lockup facilities and, if so, whether there is any other way to fix the problems.

By forging a settlement, the state might prevent a judicial order that could take the prisons out of its control.

"We're open to discussing settlement, and at this point, everything is on the table to discuss," said Andrea Lynn Hoch, Schwarzenegger's top legal advisor. But she said any agreement would have to preserve "the state's authority to actually run its prison system."

The three-judge panel has indefinitely postponed a trial that was scheduled to start early next month. Two mediators appointed by the judges are attempting to broker a deal. Elwood Lui, a former state appeals court justice whose firm has represented prisoners, is acting as a settlement referee. California Court of Appeal Justice Peter Siggins, who was Schwarzenegger's first legal affairs secretary, is a settlement consultant.

Lui and Siggins have been talking with participants in the case, including lawyers for 40 Republican state legislators, local police chiefs, sheriffs, chiefs of probation and district attorneys, about their needs in a potential settlement, and have scheduled a meeting.

"I'm encouraged by the cooperation of the parties, and we are having ongoing discussions," Lui said last week.

The state's correctional system costs more than \$10 billion a year. That its prisons are teeming is undisputed; they hold 171,000 inmates but were built for only 100,000.

About 70% of convicts return to prison within several years of being released for new crimes or parole violations, higher than the percentage in nearly all other states. Experts say that is because California puts almost every criminal on parole and sends many back to prison for minor violations.

Hoch said the state can make "a very strong case" that overcrowding is not the main cause of the inadequate care and is ready to appeal to the U.S. Supreme Court if the judges attempt to cap the prison population.

But many observers and parties in the case believe the panel -- which includes U.S. District Court judges Thelton Henderson and Lawrence Karlton and U.S. 9th Circuit Court of Appeals Judge Stephen Reinhardt -- is primed to impose a cap. The judges have been sharply critical of the state's failure to remedy medical and mental healthcare.

"They're kind of ticked off," said Martin Mayer, a lawyer representing local law enforcement officials in the case. "I think if we can't come to some resolution informally, they're going to do it formally."

In 2006, Henderson seized control of prisoner medical care from the state and placed it under the supervision of a court-appointed receiver, Robert Sillen, who has vastly increased state spending.

Schwarzenegger has softened his tone toward the judges since September, when he called it "absolutely unacceptable" that they might release any prisoners early. Now, facing a fiscal crisis, he says the state should do just that so it can focus its resources on the most dangerous criminals, instead of the tens of thousands of parole violators who cycle in and out of prison every year.

Last week, speaking in Tulare County as part of a tour to discuss his proposed budget with local officials, the governor said he hoped his fiscal plan would "work with the federal judges."

"They are, as you know, breathing down our neck, because they want to put a cap on it," he said. "And we say, 'No, stop, don't do that. Let us work with you so we can figure out a way together so we don't all of a sudden release the wrong people.' "

Lawyers involved in the settlement talks said a deal would have to be more comprehensive than Schwarzenegger's cost-cutting proposal, which does not clarify which criminals are defined as low-risk.

A settlement would have to effectively address how to reduce the number of inmates using a variety of tactics, including sentencing laws and credit for good behavior, the lawyers said. It would also probably have to provide more money for treatment programs and local law enforcement agencies in communities where more criminals would return.

Many experts on California prisons have blamed politics for the state's increasing penchant for locking people up, as sentences have been lengthened through tough-on-crime legislation and voter-approved initiatives. So prisoners' advocates have resorted to the courts.

A settlement would not require legislative approval. Lawmakers could refuse to make the prescribed legal changes, but they could then face sanctions for defying the judges. Also, Republican lawmakers who are parties to the litigation could appeal a settlement if they do not like its terms.

Assemblyman Todd Spitzer (R-Orange), who is party to the suit, said he would not agree to any settlement that involved reducing the prison population, and would appeal any deal the judges approve over his objections.

"I know the administration is negotiating with the three-judge panel behind everybody's back," said Spitzer, chairman of an Assembly committee on prisons.

"There is no other logical explanation why the administration is bending over backward to release people from prison. . . . The budget proposal is a settlement agreement."

Spitzer said he believes the solution to overcrowding is a bill Schwarzenegger signed last year that authorized the borrowing of \$7.4 billion to build 53,000 new beds, including local "re-entry" facilities with rehabilitation programs designed to reduce recidivism.

But prisoners' lawyers and the judges have said they are skeptical that it would relieve overcrowding. Jerry Powers, a chief probation officer in Stanislaus County who is also a party to the suit, said cutting the number of prisoners would not be difficult with more funding for local probation officers and rehabilitation programs for less serious criminals.

"I think there's a huge neglected population within our criminal justice system," Powers said. "There's a lot of low-hanging fruit that we can get off our rolls, out of our prisons, and back into

productive mainstream society, and concentrate on the higher-level, higher-need, higher-risk population."